

**FRANCHISE AGREEMENT**

**THIS AGREEMENT** made and entered into this 6<sup>th</sup> day of June, 2013, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes (hereinafter "Lexington"), and **tw telecom of kentucky llc**, a Delaware limited liability company, with its principal office at 10475 Park Meadows Drive, Littleton, CO 80124 (hereinafter "tw telecom").

**WITNESSETH:**

**WHEREAS**, by Ordinance No. 50-2013 (the "Ordinance"), enacted May 2, 2013, Lexington created a short-term non-exclusive franchise for the privilege of constructing, erecting, operating and maintaining a telecommunications system in Fayette County, Kentucky; and

**WHEREAS**, pursuant to the Ordinance Lexington authorized the advertising for bids on said franchise and tw telecom submitted a timely bid to acquire said franchise; and

**WHEREAS**, by Resolution No. 277-2013, enacted June 6, 2013, Lexington accepted the bid of tw telecom as substantially responsive to the Ordinance and in the best interest of the citizens of Lexington-Fayette Urban County; and

**WHEREAS**, Lexington and tw telecom have agreed to accept the following as the terms of this Agreement and as those of the franchise.

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein the receipt and sufficiency of all of which are hereby acknowledged, the Government and tw telecom agree as follows:

1. Ordinance No. 50-2013, which is attached hereto as Exhibit "A" (the "Ordinance"), is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

2. The bid of tw telecom for this franchise, which is attached hereto as Exhibit "B", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

3. Lexington hereby grants unto tw telecom a non-exclusive franchise for the privilege of constructing, erecting, operating and maintaining a telecommunications system upon, through, along, under and over the public streets, alleys, avenues, public roads, highways, sidewalks, and other public ways of the Lexington-Fayette Urban County Government in accordance with the terms of the Ordinance.

4. This Agreement shall commence on June 6, 2013, and shall expire on June 5, 2014 unless otherwise extended by the parties pursuant to the provisions of the Ordinance or the parties enter into another franchise agreement.

5. In consideration of the granting of this franchise, tw telecom agrees to pay to Lexington any fees required pursuant to the Ordinance.

6. tw telecom, its successors and assigns, in consideration of the grant, sale and conveyance of the above franchise, does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as contained in this Agreement, and further to faithfully perform all acts required of it as the purchaser of said franchise.

7. This Agreement contains and embodies the entire agreement between the parties and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto. No changes, modifications or other deletions in this Agreement shall be effective unless and until the same are reduced to writing and approved, adopted, and executed in the same fashion as this Agreement.

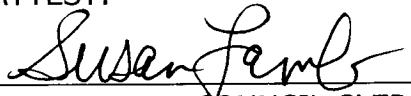
**IN TESTIMONY WHEREOF**, the Lexington-Fayette Urban County Government has caused its name to be affixed hereto by the Mayor and tw telecom of kentucky llc, has caused its name to be affixed hereto by Tina Davis, Sr. VP & Deputy General Counsel, its properly authorized officer.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

BY: \_\_\_\_\_

  
JIM GRAY, MAYOR

ATTEST:

  
\_\_\_\_\_  
SUSAN LAMB, COUNCIL CLERK

tw telecom of kentucky llc  
by: tw telecom management co. llc,  
its sole member

BY: Tina Davis

STATE OF COLORADO    )  
                                  )  
COUNTY OF DOUGLAS    )

The foregoing Agreement was subscribed, sworn to and acknowledged before me  
by Tina Davis, as Sr. VP & Deputy General Counsel, tw telecom management co. llc,  
sole member of tw telecom of kentucky llc, on this the 10<sup>th</sup> day of June, 2013.

My commission expires: May 17, 2016

Linda K. Boyle  
NOTARY PUBLIC

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**LINDA K. BOYLE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19964007128  
MY COMMISSION EXPIRES MAY 17, 2016**

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EXHIBIT A

05/02/2013

Ordinance

50-2013

ORDINANCE NO. 50 -2013

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE GENERATION, TRANSMISSION, DISTRIBUTION AND SALE OF TELECOMMUNICATIONS SERVICES WITHIN THE PUBLIC RIGHTS-OF-WAY OF FAYETTE COUNTY FOR A TWELVE (12) MONTH DURATION, WITH AN ADDITIONAL EXTENSION OF TIME NOT TO EXCEED SIX (6) MONTHS IF A LONG TERM FRANCHISE IS NOT OFFERED PRIOR TO EXPIRATION; 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 REQUIRMENTS FOR SUBSTANTIAL NEW CONSTRUCTION; AND BID REQUIREMENTS; ALL EFFECTIVE ON DATE OF PASSAGE.

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BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – 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 Fayette County, a telecommunications 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 a telecommunications system, including telephone exchange service (as defined by 47 USC §153(47)) and exchange access (as defined by 47 USC §153 (16)), subject to all of the provisions of this Ordinance. This franchise does not excuse the franchisee 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 - The Lexington-Fayette Urban County Government has already adopted legislation and regulations pertaining to, and including but not limited to, permitting, construction, street project and other related activities by franchisees and others in its Rights-of-way. Therefore, the following are incorporated herein by reference, and shall apply as if fully set forth herein:

(a) The terms and provisions of Section 253 of the Telecommunications Act of 1996, and as it may be amended in the future;

(b) The terms and provisions of KRS 136.600, et seq. (the "Telecommunications Tax Act"), and as it may be amended in the future;

(c) The terms and provisions of Chapter 17, of the Code of Ordinances, Lexington-Fayette Urban County Government (the "Code"), and as it may be amended in the future, pertaining to utilities or Right-of-way construction;

(d) The terms and provisions of Chapters 17B and 17C of the Code, and as they may be amended in the future; and

(e) The terms and provisions of the Lexington-Fayette Urban County Government Zoning Ordinance (the "Zoning Ordinance"), and as it may be amended in the future.

Section 3 – The person, firm, or corporation which shall become the purchaser of said franchise, or any successor or assignee of such person, shall hereinafter be referred to as the "Company", and the Lexington-Fayette Urban County Government shall hereinafter be referred to as the "Government". The definitions and terminology contained in the applicable provisions of the Code are hereby incorporated herein by reference.

Section 4 – The Company shall have the non-exclusive right and privilege of constructing, erecting, operating and maintaining a telecommunications system for the purpose of providing telecommunications or telecommunications services, upon, through, along, under and over the Rights-of-way within Fayette County 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 Code. Telecommunications or Telecommunications Services includes the providing or offering for rent, sale or lease, whether for money or other value, of plant, equipment, Facilities, or other property for the transmittal of voice, data, image, graphics, and other communications between or among points by wire, fiber optics, or other similar Facilities; and includes telephone exchange service (as defined by 47 USC §153(47)) and exchange access (as defined by 47 USC §153 (16); "telecommunications service", or "enhanced service" as such terms

are now, or may in the future be, defined under federal law; services connecting interexchange carriers or competitive carriers for the purpose of voice or data transmission; services connecting interexchange carriers to any entity, other than another interexchange carrier, or telephone or telecommunications company providing local exchange services, for the purpose of voice or data transmission; services providing private line point to point service for end users of voice and data transmission; nonentertainment video, videoconferencing, or point to point private line service; or any other intrastate or interstate telecommunication services which the Kentucky Public Service Commission or the FCC has authorized. This franchise does not include the right or privilege to provide cable service (as defined by 47 USC §522 (6)) or open video service (as defined by 47 CFR 76.1500 (a)), which shall be subject to separate franchising requirements, and also does not apply to the provision of any wireless service as defined by law, unless the providers of such services have Facilities located within the Rights-of-way.

Section 5 - In addition to complying with other applicable law, the Company agrees that:

(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 system, the Company 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 Company 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 Company in compliance with applicable law; and

(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 Code, 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 Company assumes all responsibility for damage or injury resulting from its placement or maintenance of any above-ground Facilities.

Section 6 - (a) The Company 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 Company shall have the authority to require such payment in advance. The Company shall be given not less than five (5) days advance notice to arrange for such temporary wire changes.

(b) The Company 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 Company. Any trimming, removal or other disturbance of trees shall conform to all applicable law or regulation.

Section 7 - In addition to any performance bond(s) required pursuant to Section 17C-23 of the Code, the Company may, with respect to aspects of those significant projects in excess of one hundred thousand dollars (\$100,000.00) which are not addressed in Section 17C-23 but which do involve the Rights-of-way, be required to post an additional project performance bond(s). This bond (or bonds) shall be set in an amount and duration to be determined by the Government upon discussing and verifying the scope of such a project with the Company, and shall be in favor of the Government to be issued by an entity subject to jurisdiction and venue in Fayette County, Kentucky. In no event shall the total cumulative amount of such bonds exceed two hundred thousand dollars (\$200,000.00) per year, and as an alternative, the

Company may choose to post one such bond to cover all of its projects on an ongoing basis.

Section 8 - The Company shall defend, indemnify, and hold harmless the Government consistent with the indemnification and hold harmless provisions as set forth in Section 17C-17 of the Code, and as it may be amended in the future.

Section 9 - The Company shall maintain in full force and effect a commercial general liability insurance policy consistent with the insurance provisions set forth in Section 17C-16 of the Code, and as it may be amended in the future.

Section 10 - The Company 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 physical handicap.

Section 11 - In the event that the Company files for a transfer of control of the Company, or a general rate case with the Kentucky Public Service Commission it will furnish the Mayor or his designee with timely notice of such filing.

Section 12 - (a) The franchise hereby created is being offered to allow the Government to negotiate a longer-term franchise to be offered for bid, and shall be for a period of twelve (12) months from the date of acceptance by the Urban County Council, with the option on the part of the Government to extend the period of time up to an additional six (6) months as necessary in order to accommodate the above. Any franchise agreement entered into pursuant to this ordinance will automatically expire upon the offering and acceptance of a longer-term franchise of the same nature. This franchise is not exclusive and the Government reserves the right to grant similar franchises to more than one Company. All franchises awarded pursuant to this Ordinance are intended to terminate at the same time. Therefore any Company awarded a franchise pursuant to this Ordinance shall only be awarded a franchise that is equal in duration to the remaining term of the initial franchise(s).

(b) This franchise creates no vested rights in the Company other than those provided by this franchise or at law, and any installation or emplacement of Facilities by the Company in the Rights-of-way is at the Company's risk.

(c) The Company is hereby given the right to assign the franchise created by this Ordinance to any person, firm or corporation able, ready and willing to carry out the terms of this franchise, but shall, prior to such assignment, provide at least sixty (60) days advance written notice to the Government and obtain its consent, which consent shall not be unreasonably withheld. This provision is not intended to apply to assignments to a parent, subsidiary or affiliate of the Company, or in those instances in which the Company has filed for a transfer of control before the Public Service Commission. Such inter-corporate transfers or transfers subject to the jurisdiction of the Public Service Commission shall require notice to the Government upon closing or approval, or as otherwise provided herein.

Section 13 - (a) If, after the Company is provided the opportunity to appear and present evidence before the Government's Commissioner of Public Works and Development or his designee, the Government finds that the Company has violated any of the following provisions of this Ordinance, the following penalties shall be recoverable. The decision of the Commissioner 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 Company shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues; in lieu of a penalty, the Company 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 Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(3) For failure to pay a permit fee when due pursuant to local law, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(b) If the Company fails to comply within thirty (30) days of any Council resolution directing compliance with any other provisions of this Ordinance, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues. The decision of the Council may be appealed to a court of competent jurisdiction.

(c) The Company 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 Company's performance or to seek the Company'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 - The Company shall maintain its System in reasonable operating condition at all normal times during the term of this Franchise. An exception to this is automatically in effect when service furnished by the Company is interrupted, impaired or prevented by fires, strikes, riots or other occurrences beyond the control of the Company, or by storms, floods or other casualties, in any of which events the Company shall do all things reasonably within its power to restore normal service within a reasonable period of time. If applicable, the Company will maintain normal business hours at its headquarters located in Lexington, Kentucky, to receive customer inquiries in accordance with any relevant Kentucky Public Service Commission order(s).

Section 15 - (a) In addition to all other rights and powers pertaining to the Government by virtue of the franchise or otherwise, the Government, by and through its Council, reserves the right to terminate and cancel the franchise and all rights and privileges of the Company hereunder in the event that the Company:

(1) Willfully violates any provision of 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 the franchise or practices any fraud or deceit upon the Government;

(3) Fails to begin or complete construction as provided under 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 Public Service Commission of Kentucky which revokes any authority of the Company to provide service in Fayette County, Kentucky.

(b) The Government may make a written demand that the Company do or comply with any such provision, rule, order or determination. The Company will be provided the opportunity to appear and present evidence before the Government's Commissioner of Public Works and Development or his 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 Company continues for a period of thirty (30) days following such a decision by the Commissioner without written proof that the corrective action has been taken or is being actively and expeditiously pursued by the Company, the Government may place its request for termination of the franchise as early as the next regular Council meeting agenda. The Government shall cause to be served upon Company, at least ten (10) days prior to the date of such Council 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 Company was relying on federal law, state law, or a valid tariff in acting or not acting on the issue in dispute.

(2) The Council 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 Company was with just cause.

(3) If such violation by the Company is found to have been with just cause, the Council shall direct the Company 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 Council determines such violation by the Company was without just cause, then the Council may, by resolution, declare that the franchise of the Company shall be terminated and forfeited unless there is compliance by the Company within such reasonable period as the Council may fix. Any such determination by the Council is a final appealable action to a court of competent jurisdiction.

Section 16 - The Company 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 Company's Facilities within Fayette County, 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 - The Council shall have the right to cancel this franchise thirty (30) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, 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 Company.

Section 18 - 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 - 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 Council, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The Council 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 Council, 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. Each bid made by a corporation or person not already owning Facilities within the territorial limits of Fayette County sufficient to render the 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 system required to render the 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 system to be erected, conditioned that it shall be enforceable in case the Company should fail, within one hundred eighty (180) days, to establish and begin rendering the service in the manner set forth in this Ordinance. Upon rendering the initial service, this bond may be replaced by the performance bond required by Section 22(b), if applicable. Bids shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the system required to render the service and compliance with all applicable state, federal and local statutes, ordinances and regulations. The Government reserves the right to review any of bidder's supporting documentation which justify bidder's determination of the estimated cost and compliance with laws and regulations. In addition, each bid shall be accompanied by a non-refundable payment to the Government in the amount of five hundred dollars (\$500.00) to cover the Government's cost of advertising and other administrative expenses incurred. In the event that the total amount submitted by all bidders exceeds the Government's actual

costs, it will refund the overcharge to each Company on a pro rata basis within thirty (30) days.

Section 20 - The Government and Company acknowledge that pursuant to the Telecommunications Tax Act, the Commonwealth of Kentucky collects a tax in lieu of a traditional franchise fee assessment by the local government, and that the Government is precluded from the collection of additional fees that are not directly related to the advertisement of this franchise or the management, inspection or permitting of construction in the Rights-of-way. Therefore, in the event that the Telecommunications Tax Act, or the portion thereof pertaining to the collection of franchise fees by a local government, is found unlawful by a court of competent jurisdiction, the Company and the Government shall negotiate in good faith to establish a new franchise fee.

(a) Notwithstanding the above, the Company shall be required to pay the Government an amount intended to adequately compensate it for its permitting and inspection of the Company's construction activities in the Rights-of-way pursuant to Chapter 17C of the Code as required by said ordinance. The Company may seek tariff approval from the Kentucky Public Service Commission for the recovery of such payment, and may elect to pay for its permit fees upon application for each respective permit, if approved by the Government. These permitting fees are subject to change during the term of the franchise based upon an audit of the actual cost of permitting for the Government or a change in the amount of the respective permitting fees found in Section 17C-22 of the Code, as may be amended. In the event of such a change, the Company shall be provided at least sixty (60) days advance written notice.

(b) Upon the execution of this Franchise Agreement, the Company and the Government agree to enter into good faith negotiations on a pole attachment agreement.

Section 21 - In addition to all other requirements, and except to the extent prohibited by law, any Company not already owning Facilities within the Rights-of-way sufficient to render Telecommunications Services within Fayette County, or any Company that is required pursuant to law to file for a certificate of convenience and necessity from the Kentucky Public Service Commission 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 network system unless the Council 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 Code, the Company shall submit for the Government's approval a comprehensive schedule of construction of its Facilities system network no later than one (1) month after the Government's acceptance of the Company'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 Company 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 Fayette County 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 Company 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 Company 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 system network. In the event that the Government reports any concerns to the Company, the Company shall respond within a reasonable time as specified by Government or as specified elsewhere in this Ordinance. The Company 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 Company'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 Company shall publish, at its sole cost, a notice containing a map depicting where construction will occur in the Lexington Herald-Leader. 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 Company shall provide at least fourteen (14) days notice to other utilities in Fayette County of its interest in seeking construction permits to open the street before it applies for any street cut permit. The Government shall provide the Company with a listing of all such utilities and their points of contact upon request. Such notice shall inform the other utility companies of the Company's intent to undertake construction in the affected areas and state that the other utility companies must notify the Government and the Company 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 Company.

(f) Failure to comply with the above provisions, or the Code may, in the sole discretion of the Government:

(1) Be the basis for the Government to reasonably require that the Company perform more extensive restoration work than otherwise anticipated by a permit; and

(2) May result in the Company being assessed an additional premium on any permit fee to recoup any additional costs or expenses reasonably associated with the Company's failure.

(g) Unless otherwise provided an extension by the Council, the Company must make telecommunications services available within Fayette County within one hundred eighty (180) days from the date of the award of the franchise. This requirement shall not apply to a Company that does not provide, or has no intention of providing, any services to Fayette County subscribers.

(h) The Company shall maintain accurate network design drawings, maps and improvement plans of the network system, in a form acceptable to the Government, in a manner consistent with industry construction standards. The Company shall furnish the Government, without charge, with a complete set of "as-built" drawings within sixty (60)

days of completion of construction of the network 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.

Section 22 - In addition to all other requirements, and except to the extent prohibited by law, any Company not already owning Facilities within the Rights-of-way sufficient to render Telecommunications Services within Fayette County, shall also be required to perform the following requirements during the construction of its network system unless the Council 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 this franchise, the Company shall deposit with the Government's Division of Revenue a one-year irrevocable renewable letter of credit from a Fayette County financial institution 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 Company of all provisions of this franchise; 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 franchise, and the payment by the Company of any claims, liens and taxes due the Government which arise by reason of the construction, operation or maintenance of the system network.

(1) The letter of credit shall be maintained at fifty thousand dollars (\$50,000.00) during the entire term of this franchise, even if amounts have to be withdrawn pursuant to this section.

(2) If the Company 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 Company in connection with this franchise; or, fails, after three (3) days notice of such failure by the Government to comply with any provision of this 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 Company 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) If necessary, after the initial service requirement is met and the bond required by Section 19 of this Ordinance no longer protects the Government, the Government may require the Company 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 Company may deposit with the Government's Department of Revenue an irrevocable letter of credit from a Fayette County financial institution 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 Company fails to comply with the Code or any law, Ordinance or regulation governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, including the Company's proposal which is incorporated herein by reference, 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 Company, 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 Company'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 - Bids offered for purchase of this franchise 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 Lexington-Fayette Urban County Government, shall be deposited with the Government. This amount shall be in addition to the provision for any payments contained in Sections 19 and/or 20 of this Ordinance. Any check deposited pursuant to this section by an unsuccessful bidder shall be returned when the Council shall have accepted the bid or bids which in its judgment is or are the highest and best.

Section 24 - Any violation by the Company or successor or authorized Company representative of the provisions of this franchise or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this franchise and all rights hereunder after written notice to the Company and continuation of such violations, failure or default, as set forth herein.

Section 25 - 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 Fayette County, Kentucky.

Section 26 - 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 Company.

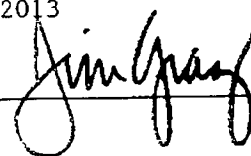
Section 27 - If any section, sentence, clause or phrase of the Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the Ordinance.

Section 28 - The franchise created by this Ordinance shall become effective when the bid for it is accepted by the Council.

Section 29 - This Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: May 2, 2013

MAYOR



ATTEST:



CLERK OF URBAN COUNTY COUNCIL

DJB:X:\Cases\MAYOR\10CC1860\CONT\00387324.DOC

PUBLISHED: May 6, 2013-1t

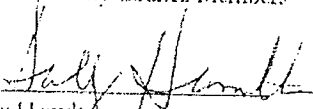


Lexington-Fayette Urban County Government  
CHIEF ADMINISTRATIVE OFFICE

Jim Gray  
Mayor

Sally Hamilton  
CAO

TO: Mayor Jim Gray  
Urban County Council Members

FROM:   
Sally Hamilton  
Chief Administrative Officer

DATE: April 15, 2013

RE: Telecommunications Franchise Agreements

The existing telecommunications franchises expire in June 2015. In order to allow an appropriate period of time to negotiate longer term franchises, we seek Council authorization to offer a short term telecommunications ordinance for an initial period of time not to exceed one year. We have been unable to negotiate the longer term franchise to date due to the focus on completing the electric and natural gas franchises.

Please contact David Barberie in the Department of Law should you have any questions.

EXHIBIT B

FARRIS MATHEWS BOBANGO, PLC

ATTORNEYS AT LAW

Nashville · Memphis

HISTORIC CASTNER-KNOTT BUILDING  
618 CHURCH STREET, SUITE 300  
NASHVILLE, TENNESSEE 37219

(615) 726-1200 telephone · (615) 726-1776 facsimile

Charles B. Welch, Jr.  
cwelch@farrismathews.com

Direct Dial:  
(615) 687-4230

May 20, 2013

**SENT VIA FEDEX EXPRESS: 8690 2356 8646**

Todd Slatin, Director  
Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, KY 40507

**Re: Invitation to Bid #65-2013  
tw telecom of ky llc Bid for Franchise under Ordinance 143-2011**

Dear Mr. Slatin:

We are counsel to tw telecom of ky llc ("tw telecom"), a telecommunication utility providing service within Fayette County. On October 29, 2008 the Kentucky Public Service Commission, pursuant to KRS 278.020(4), granted tw telecom a Certificate of Public Convenience and Necessity to enter into a franchise agreement. tw telecom desires to obtain a franchise and will comply with the terms of Ordinance 143-2011 adopted pursuant to the provisions of Ordinance 240-2008, and all other relevant laws, regulations, standards, and ordinances.

Enclosed is a check for \$500.00 as required to meet the advertising and administrative costs for the Invitation to Bid. If there are any questions concerning this bid, please do not hesitate to contact me.

Very truly yours,

FARRIS MATHEWS BOBANGO PLC

  
Charles B. Welch, Jr.

cc: Carolyn Ridley

**FARRIS MATHEWS BOBANGO PLC**

618 CHURCH STREET, SUITE 300  
NASHVILLE, TN 37219  
(615) 726-1200



87-388-640

5/20/2013

PAY TO THE ORDER OF Lexington-Fayette Urban County Government

\$ \*\*500.00

Five Hundred and 00/100\*\*\*\*\* DOLLARS

Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, KY 40507

*Charles B. Wehler*  
AUTHORIZED SIGNATURE

MEMO  
franchise advertising and admin. fee (CBW 4324-99)

⑈006799⑈ ⑆⑆06400388⑆ ⑆⑆0158704⑆

**FARRIS MATHEWS BOBANGO PLC**

6799

Lexington-Fayette Urban County Government

5/20/2013

6241 · Miscellaneous Client Expenses

franchise advertising and admin. fee (CBW 4324-999)

500.00

Bank of Nash-Operati franchise advertising and admin. fee (CBW 4324

500.00

**FARRIS MATHEWS BOBANGO PLC**

6799

Lexington-Fayette Urban County Government

5/20/2013

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